

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MELVIN STOHS,

Petitioner,

v.

JEFFERY UTTECHT, *et al.*,

Respondent.

Case No. C07-5319RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on U.S. Magistrate Judge J. Kelley Arnold's Report and Recommendation. Dkt. 15. The Court has considered the Report and Recommendation and the remainder of the file herein.

On October 2, 2007, Judge Arnold issued a Report and Recommendation in this habeas corpus action. Dkt. 15. Judge Arnold recommended that the Respondent's Motion to Dismiss be granted and the petition be dismissed with prejudice as time barred pursuant to 28 U.S.C. § 2244(d). *Id.* Judge Arnold notes that Petitioner did not file a response. *Id.* On October 4, 2007, Petitioner's Response was docketed, though he filed his pleading on September 27, 2007. Dkt. 16. On October 11, 2007, Petitioner filed Objections to the Report and Recommendation, notified the Court that he had, in fact, filed a Response to the Motion to Dismiss, and requested that the Court consider his Response. Dkt. 17. In light of the procedural posture of this matter, the Court will consider Petitioner's "Objection to Motion to Dismiss Habeas Corpus Petition." Dkt. 16.

Petitioner was convicted in 1989 of one count of aggravated first degree murder. Dkt. 13-2, at 2. Petitioner filed a direct appeal, which was denied. *Id.*, at 18-27. His motion for discretion

1 review was denied on June 4, 1991. Dkt. 13-4, at 2. On January 20, 2006, Petitioner filed a
 2 Personal Restraint Petition with the Washington State Court of Appeals, which was denied. Dkt. 13-
 3 4, at 40. Discretionary review of that Personal Restraint Petition was denied on January 10, 2007.
 4 *Id.*, at 56.

5 Judge Arnold's Report and Recommendation should be adopted. As stated in the Report and
 6 Recommendation, Petitioner's one year period of time for filing his petition under the Antiterrorism
 7 and Effective Death Penalty Act ("AEDPA") ran until April 25, 1997. *Caldron v. United States*
 8 *Dist. Court for the Cent. Dist. of Cal.*, 128 F.3d 1283, 1287 (9th Cir. 1997)(holding that for
 9 petitioners whose state court judgments became final prior to April 24, 1996, the one year time
 10 period began running on the date AEDPA was signed into law and expired on April 25, 1997).
 11 Petitioner argues that pursuant to RCW 10.73.120, the government was required to give him notice
 12 of the beginning of the "one year triggering of the collateral attack clock" and they failed to do so.
 13 Dkt. 16, at 3. Petitioner cites no authority to support his argument that the state statute he points to
 14 here applies in any manner to the timing of his federal habeas petition. Petitioner has failed to allege
 15 any basis for statutory tolling or equitable tolling. The Report and Recommendation should be
 16 adopted and this petition dismissed with prejudice as time barred.

17 Accordingly, it is **ORDERED** that:

- 18 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 15);
- 19 (2) The Petition is **DISMISSED WITH PREJUDICE**; and
- 20 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
 21 and to the Hon. J. Kelley Arnold.

21 Q

22 DATED this 5th day of November, 2007.

23 
 24 ROBERT J. BRYAN
 25 United States District Judge